

NURSING HOME REFORM AGAIN – THE PROPOSED CHANGES TO REQUIREMENTS OF PARTICIPATION

LATSHA DAVIS & MCKENNA



ATTORNEYS AT LAW

Kimber L. Latsha, Esq.

PADONA - 28th Annual Convention
Hershey, PA
March 30-April 1, 2016

THE PATIENT SAFETY MOVEMENT, QUALITY INITIATIVES AND VALUE BASED PURCHASING: IMPLICATIONS FOR LTC PROVIDERS

- **The Public Policy of Health Care**
 - Access - Cost - Quality

- **How do you Measure Quality in the Delivery of Health Care, and Specifically in Nursing Care?**

- **How does CMS Measure Quality in Nursing Care Services?**

- **Is a SNF's "Quality Rating" Important?**
 - Attracting Acute Care Discharges
 - MCO Contracting/Network (Medicare Advantage and Medicaid and Private Insurance)
 - ACO Networks
 - Bundling of Acute-PAC Payments
 - Acute and Post Acute Networks

How Does CMS Measure Quality in Nursing Care Services Today?

- Five Star Quality Rating
- Three Major Components
 - Three Previous Surveys
 - Staffing Hours Per Resident
 - Quality Measures Rating
- 2015 Changes in Calculating Scores
- Staffing as a Measure of Quality

ACA Payroll-Based Journal and Electronic Staffing Data Collection

- October 1, 2015 Test
- July 1, 2016 – Mandatory Reporting
- Auditable and Verifiable
 - Direct Care Staff (Employed/Contractor)
 - Employee Turnover and Tenure
 - Census Data
 - Case Mix
- Data Will be Used to Calculate Staffing Domain in the 5 Star Rating System –
- Until Late 2017 or Early 2018 Still Submit CMS Forms 671 and 672 to Calculate Staffing

Nursing Home Reform - OBRA 87'

- Implementing Regulations - Survey & Enforcement July 1, 1995
- State Operations Manual vs. Regulation
 - Restraints
 - Psychotropic Medications
 - Patient Centered Care
 - Falls Prevention

- **OIG Report “Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries”
Released February 2014**

- **Improving Medicare Post-Acute Care Transformation Act (“IMPACT Act”)
October 6, 2014**
- **Bipartisan bill passed on September 18, 2014 and signed into law by President Obama on October 6, 2014**

Requires Standardized Patient Assessment Data that will enable:

- Data Element uniformity
- Quality care and improved outcomes
- Comparison of quality and data across post-acute care (PAC) settings
- Improved discharge planning
- Exchangeability of data
- Coordinated care

Purposes Include:

- Improvement of Medicare beneficiary outcomes
- Provider access to longitudinal information to facilitate coordinated care
- Enable comparable data and quality across PAC settings
- Improve hospital discharge planning
- Research

Why the Attention on Post-Acute Care:

- Escalating costs associated with PAC
- Lack of data standards/interoperability across PAC settings
- Goal of establishing payment rates according to the individual characteristics of the patient, not the care setting
- PAC spending more than doubled from 27 billion in 2001 to 59 billion in 2013

Benefits Improvement & Protection Act (BIPA) of 2000

- Required the Secretary to report to Congress on standardized assessment items across PAC settings

Deficit Reduction Act (DRA) of 2005


- Required the standardization of assessment items used at discharge from an acute care setting and at admission to a post acute care setting
- Established the Post-Acute Care Payment Reform Demonstration (PAC- PRD) to harmonize payments for similar settings in PAC settings
- Resulted in the Continuity Assessment Record and Evaluation (CARE) tool, a component to test the reliability of the standardized items when used in each Medicare setting

PAC Reform Demonstration requirement of 2006

- **Data to meet federal Health Information Technology (HIT) interoperability standards**
- **Standardized Assessment Data Elements Across PAC Settings**

IMPACT Act Quality Measure Domains and Timelines

Functional status,
cognitive function, and
changes in function
and cognitive function



SNF: October 1, 2016
IRF: October 1, 2016
LTCH: October 1, 2018
HHA: January 1, 2019

Skin integrity and
changes in skin
integrity



SNF: October 1, 2016
IRF: October 1, 2016
LTCH: October 1, 2016
HHA: January 1, 2017

Medication
Reconciliation



HHA: January 1, 2017
SNF: October 2, 2018
IRF: October 1, 2018
LTCH: October 1, 2018

IMPACT Act Quality Measure Domains and Timelines

Incidence of
Major Falls



SNF: October 1, 2016
IRF: October 1, 2016
LTCH: October 1, 2016
HHA: January 1, 2019

Communicating the existence of
and providing for the transfer of
health information and care
preferences



SNF: October 1, 2018
IRF: October 1, 2018
LTCH: October 1, 2018
HHA: January 1, 2019

Resource use
and other
measures will
be specified
for reporting



- ✓ Total estimated Medicare spending per beneficiary
- ✓ Discharge to community
- ✓ Measures to reflect all-condition risk-adjusted potentially preventable hospital readmission rates



SNF: October 1, 2016
IRF: October 1, 2016
LTCH: October 1, 2016
HHA: January 1, 2017

Use of Standardized Patient Assessment Data

■ Requirements for reporting assessment data:

- Providers must submit standardized assessment data through PAC assessment instruments under applicable reporting provisions

Use of Standardized
Assessment data no
later than



SNF: October 1, 2018
IRF: October 1, 2018
LTCH:; October 1, 2018
HHA: January 1, 2019

- The data must be submitted with respect to admission and discharge for each patient, or more frequently as required

■ Data categories:

- Functional status · Cognitive function and mental status · Special services, treatments, and interventions · Medical conditions and co-morbidities · Impairments · Other categories required by the Secretary

Reform of Requirements for LTC Facilities; Proposed Rule

REGULATORY TIMELINE

- Proposed regulations issued 7/16/15.
- Comments initially due 9/14/15;
Comment period extended until 10/14/15.
- Final regulations - TBD

Reform of Requirements for LTC Facilities; Proposed Rule

- “These proposed changes are necessary to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery **and safety**. These proposals are also an integral part of our efforts to achieve broad-based improvements both in the **quality** of health care furnished through federal programs, and in patient **safety**, while at the same time reducing procedural burdens on providers.” (Preamble to Proposed Rule)

Reform of Requirements for LTC Facilities; Proposed Rule

- Over the last two to three decades, extensive evidence-based research has been conducted and has enhanced our knowledge about **resident safety**, health outcomes, individual choice, and **quality assurance** and performance improvement.

Reform of Requirements for LTC Facilities; Proposed Rule

- Many of the revisions are aimed at aligning requirements with current clinical practice standards to improve **resident safety** along with the **quality** and effectiveness of care and services delivered to residents.
- The Affordable Care Act provisions include the compliance and ethics program, quality assurance and performance improvement (QAPI).

Reform of Requirements for LTC Facilities; Proposed Rule

- **Current HHS Quality Initiatives**
 - Reducing Avoidable Hospitalization
 - Healthcare Associated Infections
 - Behavioral Health
 - Health Information Technology
 - Trauma-Informed Care
 - Requirements for Long Stay Residents
 - Implementation of the Affordable Care Act Provisions

Reform of Requirements for LTC Facilities; Proposed Rule

- **Implementation of the Affordable Care Act Provisions cont'd.**
 - Requires the operating organizations for facilities (both SNFs and NFs as defined in sections 1819(a) and 1919(a) of the Act) to have in operation a compliance and ethics program. The compliance and ethics program must be effective in preventing and detecting criminal, civil, and administrative violations under the Act and in promoting quality of care consistent with regulations that are promulgated under this new section.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Implementation of the Affordable Care Act Provisions cont'd.**
 - Requires the Secretary to establish and implement Quality Assurance and Performance Improvement (QAPI) program requirements for facilities, including multi-unit chains of facilities.
 - Implementation of a plan with quality assessment and assurance (QAA) activities
 - Requires dementia management and abuse prevention to be included as part of training requirements for nurse aides
 - Definition of NA includes an individual who provides NA services through an agency or under contract with a LTC facility.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Summary of Most Significant Revisions – Specific Provisions to be Discussed:**
 - **Definitions (§ 483.5)**
 - **Resident Rights (§ 483.10)**
 - **Freedom from Abuse, Neglect and Exploitation (§ 483.12)**
 - **Transitions of Care (§ 483.15)**
 - **Resident Assessments (§ 483.20)**
 - **Comprehensive Person-Centered Care (§ 483.21)**
 - **Quality of Care & Quality of Life (§ 483.25)**
 - **Physician Services (§ 483.30)**

Reform of Requirements for LTC Facilities; Proposed Rule

- **Summary of Most Significant Revisions – Specific Provisions to be Discussed (cont'd.):**
 - Nursing Services (§ 483.35)
 - Behavioral Health Services (§ 483.40)
 - Pharmacy Services (§ 483.45)
 - Food and Nutrition Services (§ 483.60)
 - Administration (§ 483.70)
 - QAPI (§ 483.75)
 - Infection Control (§ 483.80)
 - Compliance & Ethics Program (§ 483.85)
 - Physical Environment (§ 483.90)
 - Training Requirements (§ 483.95)

Reform of Requirements for LTC Facilities; Proposed Rule

■ Relevant Definitions Added (§ 483.5)

- Abuse – willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to obtain or maintain physical, mental and psychosocial well-being. (**NOTE:** the term “willful” means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.)
- Sexual Abuse

Reform of Requirements for LTC Facilities; Proposed Rule

- **Relevant Definitions Added (§ 483.5) cont'd.**
 - Neglect
 - Misappropriation of resident's property
 - Exploitation
 - Adverse Event – an untoward, undesirable, and usually unanticipated event that causes death or serious injury or the risk thereof.
 - Person-Centered Care – to focus on the resident as the locus of control and support the resident in making their own choices and having control over their daily lives.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Relevant Definitions Added (§ 483.5) cont'd.**
 - Resident Representative – An individual of the resident's choice who has access to information and participates in healthcare discussions or a personal representative with legal standing (i.e. POA, guardian, health care surrogate). If selected as the resident representative, the same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Resident Rights (§ 483.10)

CHOICE OF ATTENDING PHYSICIAN:

- Physician chosen by resident must be licensed to practice medicine and meet professional credentialing requirements of the facility.
- Facility right to seek alternative physician if physician chosen by resident refuses to or does not meet credentialing requirements.
- If resident subsequently selects another physician who meets requirements, facility must honor resident's choice.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Resident Rights (§ 483.10) cont'd.

CHOICE OF ROOMMATE:

- Resident has right to share a room with roommate of choice, when both residents live in the same facility, both residents consent to the arrangement and facility can reasonably accommodate the arrangement.

VISITORS:

- Right to receive visitors of choice at the time of resident's choosing, subject to resident's right to deny visitation and in a manner that does not impose on the right of another resident.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Freedom from Abuse, Neglect and Exploitation (§483.12)**
 - Facility must not employ individuals who have had a disciplinary action taken against their professional license by a state licensure body as a result of a finding of abuse, neglect, mistreatment of residents or misappropriation of resident property.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Transitions of Care (§483.15)

(currently known as Admission, Transfer and Discharge Rights)

- When transfer/discharge necessary for resident's safety and welfare, facility must include in its documentation:
 - the specific resident needs that it cannot meet.
 - facility attempts to meet the resident needs.
 - services available at the receiving facility that will meet resident's needs.
- If resident appeals a transfer/discharge notice, facility may not transfer/discharge resident while appeal pending.

Reform of Requirements for LTC Facilities; Proposed Rule

- Resident Assessments (§ 483.20)
 - Requires that certain providers, including long term care facilities, take into account, quality, resource use, and other measures to inform and assist with the discharge planning process, while also accounting for the treatment preferences and goals of care of residents. We propose to implement the **discharge planning requirements** mandated by the IMPACT Act by revising, or adding where appropriate, discharge planning requirements for LTC facilities.

Reform of Requirements for LTC Facilities; Proposed Rule

- Resident Assessments (§ 483.20) cont'd.
 - We proposed to require facilities to document in a resident's care plan the resident's goals for admission, assess the resident's potential for future discharge, and include discharge planning in the comprehensive care plan, as appropriate.
 - We propose to require that the resident's discharge summary include a reconciliation of all discharge medications with the resident's pre-admission medications (both prescribed and over-the-counter).

Reform of Requirements for LTC Facilities; Proposed Rule

- **Resident Assessments (§ 483.20) cont'd.**
 - Addition of exceptions to the preadmission screening for individuals with mental illness and individuals with intellectual disability for admittance into a nursing facility.

(NOTE: language inadvertently omitted when regulatory requirements for LTC facilities was initially written).

Reform of Requirements for LTC Facilities; Proposed Rule

- **Resident Assessments (§ 483.20) cont'd.**
 - Nursing facility to notify the state mental health authority or state intellectual disability authority upon a significant change in resident's physical or mental condition so that a resident review can be conducted.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Comprehensive Person-Centered Care (§ 483.21)**
 - Completion of baseline interim care plan for each resident within 48 hours of resident's admission.
 - Baseline care plan to include:
 - initial goals based on admission orders.
 - physician orders.
 - dietary orders.
 - therapy services.
 - social services – PASARR recommendation, if applicable.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Comprehensive Person-Centered Care (§ 483.21) cont'd.**
 - Option to complete a comprehensive care plan within 48 hours of admission instead of completing a baseline interim care plan and then a comprehensive care plan.
 - Interdisciplinary Team – addition of a nurse aide, member of the food and nutrition service staff, and a social worker.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Comprehensive Person-Centered Care (§ 483.21) cont'd.

■ DISCHARGE PLANNING:

- IMPACT ACT – requires post-acute care providers, such as LTC facilities, to report standardized patient assessment data, data on quality measures and data on resource use and other measures.
- Act also requires that standardized patient data, quality measures and resource use measures along with patient treatment goals be taken into account in discharge planning.
- Proposed regs require facilitation to develop and implement an effective discharge planning process to ensure the discharge goals and needs of each resident.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Quality of Care and Quality of Life (§ 483.25)**
 - **Special Need Issues:** We propose to add a new requirement that facilities must ensure that residents receive necessary and appropriate pain management.
 - **Re-designation of Requirements:** We propose to relocate the provisions regarding unnecessary drugs, antipsychotic drugs, medication errors and influenza and pneumococcal immunizations to § 483.45 Pharmacy services.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Quality of Care and Quality of Life (§ 483.25) cont'd.

■ Specific requirements re: use of bed rails.

- Facility to ensure correct installation, use and maintenance of bed rails, including attempting to use alternatives prior to installing a side or bed rail.
- Assessing the resident for risk of entrapment from bed rails prior to installation.
- Reviewing the risks and benefits of bed rails with the resident and obtaining informed consent prior to installation.
- Following the manufacturers' recommendations and specifications for installing and maintaining bed rails.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Quality of Care and Quality of Life (§ 483.25) cont'd.

- Modification to provisions re: nasogastric tubes to reflect current clinical practice.
 - We propose to modify the requirement for a therapeutic diet to require that the resident is offered a therapeutic diet when appropriate, recognizing that the resident has a right to choose to eat a therapeutic diet or not.
 - On the comprehensive assessment of a resident, the facility must ensure that a resident who has been able to eat enough on his or her own or with assistance is not fed by enteral methods unless the resident's clinical condition demonstrates that enteral feeding was clinically indicated and consented to by the resident.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Quality of Care and Quality of Life (§ 483.25) cont'd.**
 - Residents to receive necessary and appropriate pain management.
 - Based on the resident's comprehensive assessment and choices, must ensure that residents receive treatment and care for pain management in accordance with professional standards of practice.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Physician Services (§ 483.30)**
 - **In-person Evaluation:** Facility, prior to an unscheduled transfer of a resident to a hospital, must provide or arrange for an in-person evaluation of a resident, to be conducted expeditiously, by a physician, physician assistant, nurse practitioner or clinical nurse specialist prior to transfer of the resident to hospital unless transfer is emergent and obtaining an in-person evaluation would endanger the health/safety of resident or unreasonably delay transfer.
 - **Delegation of Orders:** We propose to allow physicians to delegate dietary orders to dietitians and therapy orders to therapists if permitted by State law.

Reform of Requirements for LTC Facilities; Proposed Rule

- Nursing Services (§ 483.35)
 - Sufficient Staffing: We propose to add a **competency requirement** for determining sufficient nursing staff based on a facility assessment, which includes but is not limited to the number of residents, resident acuity, range of diagnoses, and the content of care plans.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Staffing (§ 483.35)

- **Facility Assessment:** We propose to require facilities to determine their direct care staff needs, based on the facility's assessment.
- **Competency Approach:** We propose to require that staff must have the appropriate competencies and skills to provide behavioral health care and services, which include caring for residents with mental and psychosocial illnesses and implementing non-pharmacological interventions.

Reform of Requirements for LTC Facilities; Proposed Rule

- Behavioral Health Services (§ 483.40) *New Section*
 - New requirements to ensure that there are sufficient direct care staff with the appropriate competencies and skills to provide the necessary care to residents with mental illness and cognitive impairment.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Pharmacy Services (§ 483.45)

- We propose to add the requirement that a pharmacist review a resident's medical chart at least every 6 months and when the resident is new to the facility, a prior resident returns or is transferred from a hospital or other facility, and during each monthly drug regimen review when the resident has been prescribed or is taking a psychotropic drug, an antibiotic or any drug the QAA Committee has requested be included in the pharmacist's monthly drug review.

Reform of Requirements for LTC Facilities; Proposed Rule

- Pharmacy Services (§ 483.45) cont'd.
 - We propose to require the pharmacist to document in a written report any irregularities noted during the drug regimen review that lists at a minimum, the resident's name, the relevant drug, and the irregularity identified, to be sent to the attending physician and the facility's medical director and director of nursing.

Reform of Requirements for LTC Facilities; Proposed Rule

- Pharmacy Services (§ 483.45) cont'd.
 - We propose to require that the attending physician document in the resident's medical record that he or she has reviewed the identified irregularity and what, if any, action they have taken to address it.
 - We propose to require that facilities ensure residents who have not used psychotropic drugs not be given these drugs unless medically necessary.

Reform of Requirements for LTC Facilities; Proposed Rule

- Pharmacy Services (§ 483.45) cont'd.
 - We propose that PRN (Pro re nata or as needed) orders for psychotropic drugs be limited to 48 hours. Orders could not be continued beyond that time unless the primary care provider (for example, the resident's physician) reviewed the need for the medications prior to renewal of the order, and documented the rationale for the order in the resident's clinical record.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Food and Nutrition Services (§ 483.60)**
 - **Staffing:** We propose to require facilities to employ sufficient staff with the appropriate competencies and skills sets to carry out the functions of the dietary service while taking into consideration resident assessments, and individual plans of care, including diagnoses and acuity, as well as the facility's resident census.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Food and Nutrition Services (§ 483.60) cont'd.**
 - Menus shall reflect the religious, cultural and ethnic needs of the residents, as well as input received from residents and resident groups.
 - Facility shall develop a policy regarding the use and storage of foods brought to residents by visitors to ensure safe and sanitary handling.
 - Resident has right to accept/refuse food from family, friends, and visitors.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Food and Nutrition Services (§ 483.60) cont'd.**
 - **Ordering Therapeutic Diets:** We propose to allow the attending physician to delegate to a registered or licensed dietitian the task of prescribing a resident's diet, including a therapeutic diet, to the extent allowed by state law.
 - **Frequency of Meals:** We propose to require facilities to have available suitable and nourishing alternative meals and snacks for residents who want to eat at non-traditional times or outside of scheduled meal times in accordance with the resident's plan of care.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Food and Nutrition Services (§ 483.60)
cont'd.**
- Clarification that a qualified dietician is:
 - Registered by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics OR
 - Meets the State licensure or certification requirements.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Food and Nutrition Services (§ 483.60) cont'd.**
 - Director of food and nutrition must be:
 - A certified dietary manager.
 - A certified food service manager.
 - Has similar national certification for food service management and safety from a national certifying body; or
 - Has an associate's or higher degree in food service management or hospitality from an accredited institution of higher learning.

Reform of Requirements for LTC Facilities; Proposed Rule

- Administration (§483.70)
 - Conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies.
 - The facility must review and update that assessment, as necessary, and at least annually.

Reform of Requirements for LTC Facilities; Proposed Rule

- Administration (§483.70) cont'd.
 - Facility assessments to address:
 - Resident population (that is, number of residents, overall types of care and staff competencies required by the residents, and cultural aspects)
 - Facility's resources (for example, equipment, and overall personnel), and
 - A facility-based and community-based risk assessment, utilizing an all hazards approach.

Reform of Requirements for LTC Facilities; Proposed Rule

- Administration (§483.70) cont'd.
 - Binding Arbitration Agreements
 - Facility must ensure that agreement is explained to the resident in a form and manner that he/she understands, including in a language the resident understands.
 - Resident acknowledges that he/she understands.
 - Agreement is entered into voluntarily and provides for selection of a neutral arbitrator and convenient venue to both parties.
 - Admission to facility must not be contingent upon resident/resident representative executing the binding arbitration agreement.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Administration (§483.70) cont'd.**
 - **Binding Arbitration Agreements cont'd.**
 - Agreement must not contain language that prohibits or discourages the resident or anyone else from communicating with Federal, State, or Local officials.
 - Agreement may be signed by an individual other than resident if:
 - i) allowed by State law;
 - ii) all of the aforementioned requirements for binding agreements are met;
 - iii) individual has no interest in facility.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Quality Assurance and Performance

Improvement (QAPI) (§ 483.75) *New Section*

- Facility shall develop and implement and maintain an effective, comprehensive, data-driven QAPI program that focuses on systems of care, outcomes and services for residents and staff.
- QAPI plan to be submitted to State agency at the 1st annual recertification survey that occurs after the effective date of the regulations.
- QAPI plan to be submitted to State agency or Federal surveyor at each annual recertification and upon request during any other survey and to CMS upon request.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Quality Assurance and Performance Improvement (QAPI) (§ 483.75) *New Section* cont'd.**
 - Facility must design its QAPI program to be ongoing, comprehensive, and to address the full range of care and services provided by the facility.
 - Facility must establish and implement written policies and procedures for feedback, data collections systems, and monitoring, including adverse event monitoring.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Quality Assurance and Performance Improvement (QAPI) (§ 483.75) *New Section* cont'd.**
 - Facility must take actions aimed at performance improvement and, after implementing those actions, measure its success, and track performance to ensure that improvements are realized and sustained.
 - Performance improvement activities must track medical errors and adverse resident events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the facility.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Infection Control (§ 483.80)

- We propose to require facilities to have a system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under an arrangement based upon its facility and resident assessments that is reviewed and updated annually.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Infection Control (§ 483.80) cont'd.

- Facility's infection prevention and control program (IPCP) must include an antibiotic stewardship program that includes: (1) antibiotic use protocols and systems for monitoring antibiotic use; (2) recording incidents identified under the facility's IPCP; and (3) corrective actions taken by the facility.
- Facility shall designate an Infection Prevention and Control Officer (IPCO) who is responsible for IPCP Program and who has received specialized training in infection prevention and control.
 - IPCO to be a member of the Quality Assessment and Assurance Committee.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Compliance and Ethics Program (§ 483.85)**
 - We propose to require the operating organization for each facility to have in operation a compliance and ethics program that has established written compliance and ethics standards, policies and procedures that are capable of reducing the prospect of criminal, civil, and administrative violations in accordance with section 1128I(b) of the Act.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Compliance & Ethics Program (§ 483.85) cont'd.

Compliance & Ethics Program must contain, at a minimum, the following components:

1. Written compliance and ethics standards, policies and procedures and designation of compliance & ethics program contact to which individuals may report suspected violations as well as alternate method for reporting suspected violation anonymously.
2. Assignment of specific individual within the high-level personnel of the operating organization to oversee compliance with the compliance and ethics program's standards, policies and procedures.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Compliance & Ethics Program (§ 483.85) cont'd.

3. Sufficient resources and authority to individuals designated to oversee compliance.
4. Due care not to delegate substantial discretionary authority to individuals who had propensity to engage in criminal, civil and administrative violations.
5. Facility takes steps to effectively communicate the standards, policies, and procedures in the compliance and ethics program to the entire staff, individuals providing services under contractual arrangement and volunteers.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Compliance & Ethics Program (§ 483.85) cont'd.

6. Utilizing monitoring and auditing systems to detect criminal, civil and administration violations.
7. Consistent enforcement of the standards, policies and procedure through appropriate disciplinary measure (i.e. discipline of individuals for failure to detect/report a violation).
8. After a violation is detected, steps taken to respond to violation and prevent further similar violations.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Compliance & Ethics Program (§ 483.85) cont'd.

Operating organizations that operate five (5) or more facilities shall designate a compliance officer who shall be:

- designated as high-level personnel of the operating organization and
- responsible to oversee the compliance and ethics program.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Compliance & Ethics Program (§ 483.85) cont'd.

Operating organization that operates five (5) or more facilities, must also meet the following requirements:

- Mandatory annual training on compliance and ethics program.
- Designated compliance liaisons located at each of the operating organizations' facilities.

Compliance officer shall report directly to the governing body and shall NOT be subordinate to general counsel, CFO or CEO.

Reform of Requirements for LTC Facilities; Proposed Rule

■ Physical Environment (§483.90)

RESIDENT ROOM:

Two (2) residents per bedroom (applicable to facility initially certified after the effective date of final rule).

TOILET FACILITIES:

Bathroom to be equipped with at least a toilet, sink, and shower in each resident room (applicable to facility initially certified after the effective date of the final rule).

Reform of Requirements for LTC Facilities; Proposed Rule

- **Training Requirements (§ 483.95) *New Section***
We propose to add a new section to subpart B that sets forth all the requirements of an effective training program that facilities must develop, implement, and maintain for all new and existing staff, individuals providing services under a contractual arrangement, and volunteers, consistent with their expected roles.

Reform of Requirements for LTC Facilities; Proposed Rule

- Training Requirements (§ 483.95) cont'd.
 - QAPI & Infection Control: We propose to require facilities to include mandatory training as a part of their QAPI and infection prevention and control programs that educate staff on the written standards, policies, and procedures for each program.
 - We would require the operating organization for each facility to include training as a part of their compliance and ethics program. We propose to require annual training if the operating organization operates five or more facilities.

Reform of Requirements for LTC Facilities; Proposed Rule

- **Training Requirements (§ 483.95) cont'd.**
 - We propose to require dementia management and resident abuse prevention training to be a part of 12 hours per year in-service training for nurse aides.
 - **Behavioral Health Training:** We propose to require that facilities provide behavioral health training to its entire staff, based on the facility assessment at § 483.70(e).

Quality and Payment Initiatives

- Rate Reduction of 2% Beginning October 1, 2017 for SNF Failure to Report Quality and Resource Use Measure Data

Medicare SNF Value-Based Payment

- **Protecting Access to Medicare of Act – April 2014 (“DOC Fix”)**
- **Publicly Report Performance on the Readmission Measure on Nursing Home Compare (October 1, 2017)**

Medicare SNF Value-Based Payment

- **SNF Hospital Readmission Penalty**
 - Establish Incentive Pool for high performing SNFs as an incentive to prevent unnecessary hospital readmissions
 - Withhold 2% of Medicare reimbursement
 - Redistribute the 2% based on incentives and penalty
- **SNF VBP Incentives and Penalties Applied (October 1, 2018)**

Quality and Payment Initiatives

- **CMS Proposed Rule on Part A and B Bundled Payment for Hip and Knee Replacement Program**
 - Hospitals control the bundle and bear the financial risk
 - Episode starts at admission and ends 90 days after discharge
 - Acute/PAC bundling and partnership

Quality and Payment Initiatives

- **OIG Report “The Medicare Payment System for Skilled Nursing Facilities Needs to be Reevaluated September 2015**
 - Evaluate reducing payment rates for therapy
 - Change method for paying for therapy
 - Adjust Medicare payments to eliminate any increase unrelated to beneficiary characteristic

Quality and Payment Initiatives

- Studies of Alternative PAC Payment Methods

The Medicare Payment Advisory Commission (MedPAC) is directed to submit a report to Congress that evaluates and recommends payment rate systems that take an individual's characteristics into account, rather than only considering the facility in which a patient is treated. (*Site Neutrality*)

HHS Secretary's Recommendations for PAC Prospective Payments

- Not later than two years after HHS has collected two years of data on quality measures, the Secretary, in consultation with MedPAC and appropriate stakeholders, is required to submit a report to Congress that includes recommendations on, and a prototype of, a PAC prospective payment system (PPS) that:

HHS Secretary's Recommendations for PAC Prospective Payments

- Bases payments on patient characteristics rather than the facility in which they are treated
- Accounts for the clinical appropriateness of items and services provided and Medicare beneficiary outcomes;
- Incorporates standardized patient assessment data; and
- *Furtherers clinical integration, such as by motivating greater coordination around a single condition or procedure to integrate hospital systems with PAC providers.*

- **The report to Congress is also required to include:**
 - **Recommendations on which Medicare fee-for-service regulations for PAC payment systems should be altered;**
 - **An analysis of the impact of the recommended payment system on Medicare beneficiary cost-sharing, access to care, and choice of setting;**
 - **A projection of any potential reduction in Medicare expenditures of SSA that may be attributable to the new payment system; and**
 - **A review of the value of certain facilities.**

MedPAC Report

No later than the first June 30th following the submission of the Secretary's report to Congress, MedPAC is required to submit to Congress a report including recommendations and a technical prototype on a PAC PPS that satisfies the specifications in the Secretary's report.

Medical Payment Initiatives

- **Managed Long-Term Services and Supports (“MLTSS”)**
- **Community Health Choices Program - September 16, 2015 – Concept Paper**
 - **Coordinate health and LTSS through CHC Managed Care Organizations (“CHC-MCO’s”)**
 - **Rate model will include value-based incentives to increase the use of HCBS and meet other program goals**
 - **Phase in from –**
 - **SW Region – January 2017**
 - **SE Region – January 2018**
 - **NW, Lehigh-Capitol and Northeast Regions – January 2019**

Conclusion and Q & A

Kimber L. Latsha, Esq.

Latsha David & McKenna, P.C.

1700 Bent Creek Blvd., Suite 140

Mechanicsburg, PA 17050

Phone: (717) 620-2424

Email: klatsha@ldylaw.com

Website: www.ldylaw.com